

Division of Research  
School of Business Administration

August 1987

SRI LANKA'S LEGAL SYSTEM:  
MUSEUM OF ANTIQUITIES  
OR MELTING-POT OF IDEAS?

Working Paper #522

George C. Cameron III  
University of Michigan

FOR DISCUSSION PURPOSES ONLY

None of this material is to be quoted or  
reproduced without the expressed permission  
of the Division of Research.

Copyright 1987  
University of Michigan  
School of Business Administration  
Ann Arbor Michigan 48109



In mid-April 1987, the small island-nation of Sri Lanka again made world headlines--of the wrong kind.<sup>1</sup> Groups advocating a separate state for the island's ethnic Tamils resorted to terrorist violence of the worst sort.<sup>2</sup> In one incident, several buses returning from a holiday celebration were stopped in the jungle, and 127 men, women and children were murdered.<sup>3</sup> Three days later, in a night-time massacre reminiscent of the Vietnam War, fifteen villagers were taken from their homes and shot.<sup>4</sup> In a separate incident in the northern part of the island, Tamil guerrillas killed a policeman in an attack on a police post.<sup>5</sup> An attack on an army post left fourteen soldiers, three policemen, and eight rebels dead.<sup>6</sup> Fifteen more soldiers died, and 60 were wounded, when a bomb was detonated under an army vehicle.<sup>7</sup> A car bomb detonated near the main bus station in Colombo, the nation's capital, left over 100 persons dead and many more injured.<sup>8</sup> The government was finally forced to respond with military force. The two combat aircraft of the Sri Lankan air force (attack helicopters) carried out bombing raids against camps of the rebel groups believed to be responsible for the terrorist attacks.<sup>9</sup> At least 80 more people were killed, and about the same number wounded in these attacks, according to government sources.<sup>10</sup> As the death toll for the Seven Days in April climbed towards 500, the prospects for a peaceful settlement of the long-simmering ethnic conflict between the minority Tamils and the majority Sinhalese seemed gloomier than ever.<sup>11</sup> Over 5,000 have died during the last four years of this bitter, bloody, but unpublicized conflict.<sup>12</sup>

#### HISTORICAL BACKGROUND

The roots of this conflict can be traced far back in the nation's history. Although both Sinhalese and Tamils migrated to the island over two thousand years ago, conflict existed between them almost from the beginning. The Sinhalese are descended from an Indo-Aryan group from northern India who

settled on Ceylon about 500 B.C.<sup>13</sup> Most Sinhalese are Buddhists, and the Buddhist influence on the island's development has been very strong.<sup>14</sup>

The Tamils are a Dravidian people from southern India; most are Hindu.<sup>15</sup> The Tamils came to the island in two different migrations, and under very different circumstances. The original Tamil settlers arrived in northern Ceylon (the Jaffna Peninsula) sometime between 400 B.C. and 200 B.C.<sup>16</sup> (A second wave of Tamil immigrants came in the nineteenth century, imported by the British as plantation laborers.) During the period 200 B.C. to 1000 A.D., the three rival Tamil kingdoms in southern India constantly intervened in Ceylon's affairs.<sup>17</sup> Dynastic struggles on the island provided the occasion for some of these incursions, as a Ceylonese contender for power might ally himself with one of the Tamil powers.<sup>18</sup> The Sinhalese reciprocated by invading India in the ninth and tenth centuries, also as part of dynastic struggles on the mainland.<sup>19</sup> During most of the eleventh century, Ceylon was actually governed as a province of South India.<sup>20</sup>

While King Vijayabahu I regained control in 1070, Sinhalese power declined during subsequent decades.<sup>21</sup> A separate Tamil kingdom, established in Jaffna, held sway over the northern part of the island.<sup>22</sup> What eventually came to be the dominant Sinhalese power was established in the central highlands, around Gampola and Kandy. A separate Sinhalese kingdom ruled the western coastal areas. Although the Sinhalese allied themselves with the Arab traders and settlers against the Tamils, some historians feel that only the Portuguese colonization prevented the island from being absorbed by south India.<sup>23</sup>

Commencing as traders, the Portuguese gradually gained control of the coastal areas of the island. They allied themselves with the King of Kotte, and through him took over the western districts.<sup>24</sup> In 1619, they annexed

Jaffna. Little by little, they moved down the eastern coast to the port cities of Batticaloa and Trincomalee.<sup>25</sup> The Portuguese thus effectively controlled the island's trade, and its relations with the rest of the world, although they were never able to subdue the central Sinhalese kingdom at Kandy.

The Dutch gained their initial foothold on the island as an ally of Kandy, against the Portuguese. Disputes between the allies arose after the ouster of the Portuguese, and the Dutch succeeded them as the colonial power in charge of the island's seaports and trade.<sup>26</sup> When the Dutch joined the French on the American colonies' side in their war for independence from the British, the British occupied Trincomalee. They were quickly ousted by the French, who returned the port to the Dutch. By 1796, however, the British had expelled the Dutch from the island and taken control for themselves. Ceylon remained a British colony until it was granted independence in 1948. Ironically, the same war which ended British colonial rule for thirteen North American colonies began it for the island of Ceylon.

#### LEGAL SEPARATISM VS. LEGAL INTEGRATION

Each group of immigrants, invaders, or colonizers had its own legal system when it came to the island. Several of these have survived to the present day, albeit in modified form. In concert, they give modern Sri Lanka a legal system of unparalleled richness and diversity.

Kandyan Legal Institutions.--What has come to be known as "Kandyan Law" was historically the law as applied in a certain territorial area, i.e., those up-country Sinhalese provinces which were finally conquered only by the British.<sup>27</sup> It was the body of legal rules originally sanctioned by the complicated hierarchy of royal Kandyan officials. Later, it provided the basis for the separate judicial administration of these provinces which was

instituted by the British.<sup>28</sup> At the time of the signing of the Kandyan Convention in 1815, by the terms of which the Sinhalese were to be governed by their own customary rules of law, the Kandyan Law consisted of "essentially unwritten custom, known to the people but not recorded in any systematic or compendious form."<sup>29</sup>

Along with the complex system of adjudication and judicial administration in these provinces, there existed an equally intricate feudalistic system of land tenure, including specified services which were owed by the tenant or land-holder.<sup>30</sup> Property rights thus constituted an important part of the Kandyan legal system.<sup>31</sup> Rules for inheritance are of course an essential subpart of any system of property rights. Development and application of property law thus involve significant issues for the economy and for society as a whole.

One other substantive topic from Kandyan Law deserves specific mention--the laws and customs pertaining to marriage and divorce.<sup>32</sup> This is surely a vital part of even the most amorphous legal system; family status rules will normally be closely intertwined with the inheritance of property and general property rights, and may also exert a considerable influence on governmental functions. Polygamy was practiced on the island for a long time, and was apparently still in vogue when it was officially outlawed in 1955.<sup>33</sup> Ievers described Kandyan practices around the turn of the century:

Marriage among the Kandyan was a loose tie. It was described in the Legislative Council as being "contracted with a wink and divorced with a kick."<sup>34</sup>

Marriage and divorce law is one important area where much of the Kandyan customary law is still applied.

At present then, the Kandyan Law, as modified by court interpretations and legislative enactments, is concerned primarily with the subjects of

marriage, divorce, adoption, property rights, and succession. It is applied to those persons who may be described as "Kandyans and their descendants," as provided in the Kandyan Succession Ordinance of 1917. On any question where the Kandyan Law provides no answer, the Roman-Dutch Law is used.

The Thesawalami.--The Thesawalami is a special system of customary law which is both personal and territorial in nature. The term itself may be translated from the Tamil as meaning "custom of the country."<sup>35</sup> It is territorial in the sense that it applies to all lands located in the Northern Province, whether owned by Tamil, Sinhalese, Muslim, Burgher, English, or Chinese owners. This applicability includes all aspects of real property ownership, such as the special otti mortgage and the peculiar system of servitudes known to the Tamils.

The second part of the Thesawalami provides a personal law for those who may be described as "Malabar Inhabitants of the Province of Jaffna" (and their descendants), covering the important subjects of marriage, family relations, status relationships generally, intestate succession, and adoption as a substitute for making a testamentary disposition.<sup>36</sup> This collection of rules was largely based on Dravidian usages imported from South India, as modified by Hindu, Muslim, Portuguese, and Roman-Dutch influences. The Thesawalami was codified by the Dutch in 1707, and translated and incorporated into the statute books by the British in 1806. Some parts of this statutory version have since become obsolete, or been expressly or impliedly repealed by subsequent enactments. If the Thesawalami fails to provide a solution, the court will turn to the Roman-Dutch Law.<sup>37</sup>

The Thesawalami as applied today is certainly much changed from the original Dravidian customs. It was not strictly applied even before its codification by the Dutch, as witness the following instructions which Paviljoen, the Commandeur of Jaffna-patam, left for his successor in 1665:

The natives are governed according to the customs of the country if these are clear and reasonable; otherwise according to our law.<sup>38</sup>

Undoubtedly substantially modified in the codification process itself, these rules have also been amended (as indicated above) by subsequent statutes, such as the Matrimonial Rights and Inheritance Ordinance (Jaffna) of 1911. The actual application of the rules in the courts will also produce subtle changes in the law as old customs are adapted to meet new conditions. Finally, several commissions and legal scholars have suggested modification and improvement of the Thesawalami at various times; but for the most part, any changes which have actually been made as a result of such efforts have been relatively minor in scope.<sup>39</sup>

The future of the Thesawalami as an independent system of law seems to be somewhat uncertain, given the present political situation in Sri Lanka, and the generally favorable attitude of its legal profession towards some type of comprehensive national restatement of the law.

Muslim Law.--The Muslim Law in Sri Lanka is a personal law which is applied to the members of that religious community. Its fundamental basis is of course the Koran, the foundation of all Muslim Law. Also included in this basis would be the other Muslim sources of religious and social wisdom--the Hadiths and Sunna, the Ijmaa, and the Kiyas. Collectively, these will be the foundations for Muslim Law wherever applied.<sup>40</sup>

Since Muslim Law as applied in Ceylon has been subjected to rather extensive statutory changes, general works on Muslim Law cannot be viewed as reliable guides to the island's rules. While such general works would present the background for Ceylonese developments, the statutes themselves would have to be examined in order to discover exactly what the law is.



Apparently the Dutch had a codification of Muslim Law which was applied in Ceylon as well as Batavia. At the instance of Sir Alexander Johnstone, the Mohammedan Code of 1806 was put on the statute books by the British. This British version was based either wholly or partly on the earlier Dutch codification. The Mohammedan Code of 1806 was intended as a clarification and/or translation of the customary system of religious law which had been preserved for the Muslim community when the British assumed sovereignty over the island. This Code was written in quite general terms, so that it may be necessary to prove specific customs in certain areas, or to prove the usual approach of the Muslim Law system to the problem at hand. As is the case with other systems, if no answer is provided in the Mohammedan Code, the question is decided according to the Roman-Dutch Law.<sup>41</sup>

One of the important later amendments to the 1806 Code is the Muslim Marriages and Divorce Registration Ordinance of 1937. Its basic purpose is to provide for the registering of Muslim Marriages and divorces and to regularize the procedures in the religious (Kathi) courts. The Muslim Wakfs (Trusts) and Intestate Succession Ordinance of 1931 repealed that part of the 1806 Code dealing with intestate succession, and also changed certain features of the law of donation of property. Both of these later statutes were passed to meet objections to the way the Muslim Code of 1806 was being applied in some areas. If as a result of any of these various statutory provisions a conflict exists between traditional Muslim Law and the statute, the latter will of course take precedence.<sup>42</sup>

Mukkawa Law.--Still another separate system of law existed among the fisherman caste, or Mukkawas, of the Batticaloa area. Perhaps it is not correct to speak of this as a "system" of law, since the rules dealt with only one legal subject--intestate succession. Due to the peculiar "marriage"

customs which this caste brought with them from India, a different method of distributing property on the death of the owner was found to be necessary. This customary method of intestate succession was likewise imported from India.

The Mukkawa system of intestate succession was repealed by implication by Ordinance No. 15 of 1876, which exempted from its operation only the property of those persons subject to Kandyan Law, Muslim Law, or the Thesawalami. Mukkawa Law has also become obsolete by long-standing nonuse; it is not applied today in Sri Lanka. Mukkawa Law thus provides an illustration of the method by which many conflicting and overlapping systems which are still present in modern Sri Lanka might be simplified, i.e., by the passage of comprehensive laws with only limited areas of exceptions.<sup>43</sup>

Religious Influence.--A few words must be said regarding religious influences on the legal systems of Ceylon/Sri Lanka. The Muslim influence is apparent in the separate system of law which is maintained by members of that religious community. Buddhist and Hindu influences are also present, but in different form. Only for the Muslim is religion itself a source of law; generally, it is the basis for custom, which is recognized as a source.<sup>44</sup> In addition, special statutory enactments (as illustrated above for the Muslims) may recognize religious orders and the property rights connected therewith, or may grant certain privileges to the order and its membership. The regular courts will concern themselves with religious matters only when some civil right or property question is involved in a dispute, usually in connection with such a statutory grant.<sup>45</sup>

#### EUROPEAN INTRUSION

The Portuguese Period (1505-1656).--In attempting to administer the Ceylonese territory over which they were exercising control, the Portuguese

were confronted with what must have seemed a bewildering array of customary legal systems: the Thesawalami, Kandyan Law, Muslim Law, Mukkawa Law. (The legal rules used in the low-country Sinhalese provinces were probably similar to those applied in Kandy.) Perhaps this multiplicity and complexity of the existing customary legal structures explain why they were generally ignored by the Portuguese.

There is little direct information on law and legal information during the Portuguese period. This chapter of Ceylon's history was evidently not a happy one from any viewpoint, but the legal history seems particularly depressing, as witness the following quotations from three historical works:

Never, however, did they (the Portuguese) take pains to find out what these laws and customs were; nor were they ever reduced to writing like our ordinances; nor were they ever published so that all might come to know them; nor was any order given to the Dassavas (the Portuguese administrators of provinces) and other captains nor to the foreyros (renters or leasors of land) of the villages, so that everything was left to the good or evil conscience of each, and there was none to gainsay them anything however evil it might be, and however contrary to the laws and customs of the country, save the ministers of the Royal Exchequer, who received orders according to the laws of Portugal; and who were at all times the biggest thieves in our conquests, moved by ambition and self-interest, for the most part, had no other law than sin, nor any order save ambition.<sup>46</sup>

Of their administrative methods nothing of value has survived. They only interfered with native customs when this was necessary for their own ends. The system of service tenure was continued. Administration of justice was crude, and trial by ordeal was permitted. Their soldiers were undisciplined, their officials corrupt.<sup>47</sup>

Their vicious actions destroyed the customary law of the country, and they failed to establish in its place their own legal practice.<sup>48</sup>

Assuming these to be accurate characterizations of the period, the "legal degeneracy" which they portray seems doubly unfortunate, since the basic

Portuguese structure for legal administration, as described by Ribiero, appears to have been fundamentally sound.

Since we have preserved to these people the laws and customs of their ancestors as I have stated above, every year they used to select four Portuguese whom they called Marelleiros, officers corresponding to Corregedores among us; these were nominated by the Bandigaralia, who answered to our Regedor Das Justicias, subject to the approval of the Captain-General. These were allotted among the districts of the four Dissavas, each holding his own assizes and deciding complaints according to the laws of the people. Each of the Marelleiros was accompanied by two Assessors skilled in their laws, as well as <sup>49</sup>a sheriff and a Secretary both of whom were natives.

Had this system been properly implemented (as it evidently was not), the entire Portuguese administration would certainly have been strengthened considerably. One can only speculate as to the impact which a strong, sound, and respected Portuguese regime would have had on the island's history.<sup>50</sup>

The Dutch Period (1656-1796).--If the Portuguese had been guilty of cruel and inhuman treatment, it was at least the cruelty and inhumanity of one person against another. The Dutch were much more "scientific" about the whole matter. "The Dutch had a penal code which was severe and frightening; theirs was the inhumanity of a code."<sup>51</sup> In other words, while the Dutch were not particularly benevolent either and would not tolerate interference any more than their predecessors, they did at least regularize and systematize their methods.

The Dutch also paid much closer attention to the local customs which they found in existence. Mention has already been made of the fact that the Dutch produced a codified version of Muslim Law for application in the Indies and Ceylon, and that they were responsible for the first codification of the Thesawalami.<sup>52</sup> Once discovered, then, the local law was sanctioned by the Dutch and was applied to those persons who came under its jurisdiction. The

Roman-Dutch Law was introduced as a "backstop" of sorts, a residuary system to be referred to in the event that the rules of the customary law were unknown, uncertain, or unsatisfactory.

The potential influence of the customary law was substantially reduced by the codification process, thus enabling the Roman-Dutch Law to seep into more and more areas. So long as the customary law remained in its original state (i.e., uncodified), there was the possibility that it could gradually develop the solutions necessary to meet changed conditions and new situations. As a code, customary law applied only to the subjects mentioned, and then only to the extent recognized, in the statute itself; all other subject-matter was excluded and would be handled according to the Roman-Dutch Law. Thus the "common law" of Ceylon came to be the Roman-Dutch Law, with the codified systems of customary law carving out certain specified areas of jurisdiction. With the exception of the Kandyan provinces, and subject to the introduction of certain statutes, this structure remained essentially the same under the British administration.

In addition to these changes in the legal rules themselves, the Dutch also introduced new tribunals to administer the rules. Landraads were set up, primarily to hear and decide questions relating to the ownership, occupancy, and use of land. The Dutch East India Company was interested in finding out exactly what sort of services it could demand from those who held land through it, under the traditional system of service tenures known in the area. These traditional service tenures were approved by the Dutch, unless they happened to conflict with the Company's interests in a particular matter. By insisting on documentary proof in order to establish "ownership" of land, the Dutch courts undoubtedly dispossessed many Ceylonese, who would normally not be able to produce such documents. Also, through their service on the Landraads as

"experts" in native law, the native chiefs often received more land than was their due, simply by bending their interpretations a little.<sup>53</sup> Appeals from the decisions of the Landraads and all other courts could be taken to the Raad van Justitie at Colombo, which had supervisory jurisdiction over all inferior courts as well as unlimited original criminal and civil jurisdiction. A further appeal could be taken to the Raad van Justitie in Batavia.<sup>54</sup>

This restructuring of the laws and the courts has been designated by many writers as the most significant contribution of the Dutch to the island's history. According to Ludowyk, for example, "the most influential part of the Dutch connection with Ceylon was the legal institutions they had set up in the country."<sup>55</sup> On the other hand, the same author goes on to point out that the significance of the Dutch legal administration lies not so much in the legal changes themselves as in the function which they performed. "[They] bridged the awkward gap between medievalism and nineteenth century colonial rule in Ceylon."<sup>56</sup>

Irrespective of the precise wording, it is evident that the Dutch had a profound impact on the course of Ceylonese history, and on the course of legal development in particular. The introduction of the Roman-Dutch Law, in and of itself, was of fundamental importance. The codification of the various systems of customary law set the pattern for future generations, and in so doing established the basic predominance of the Roman-Dutch Law in the Ceylonese legal system. It but remained for the British to add the final ingredients to this legal potpourri.

The British Period (1796-1948).--Upon assuming authority from the Dutch, the British gave their express sanction to the then-existing legal systems: the Roman-Dutch Law, the Kandyan Law (or, more properly, the customary law of the low-country Sinhalese), the Thesawalami, the Muslim Law, and the Mukkawa

Law. For the time being, each of these systems was to be applied as before. Difficulties quickly arose, since many of the Dutch (Burgher) legal officials on the island refused to swear an oath of allegiance to the British throne and therefore could not be used to staff the courts. As the British civil servants, whether imported from India or sent directly from England, were generally unfamiliar with the local customs, legal administration during this early period of British rule was somewhat chaotic, to say the least. There were not enough British administrators to man the courts, and those that were available did not know what legal rules to apply.

Such conditions, of course, could not last indefinitely. The British were able to persuade some of the Burghers to serve on the courts, and progress was made in familiarizing the British with local laws. Lord North, the first civil Governor of the island sent by the British, issued a revised code of laws about 1801 and also established new courts to handle the increased judicial business.<sup>57</sup> Once over these early hurdles, British legal administration proved to be both fair and efficient, and apparently left a very favorable impression on the minds of the Ceylonese.<sup>58</sup>

During the period from 1802 to 1832, legal administration was mainly in the hands of the Civil Service, with the courts staffed by Civil Service officers. In other words, the Civil Service was a unified system, which included legislative, executive, and judicial powers. In 1815, with the annexation of the Kandyan Provinces, there existed for the first time in many centuries an island-wide sovereignty. However, a separate and distinct judicial structure was maintained for the Kandyan Provinces. This meant that, prior to the Colebrook-Cameron reforms of 1833, there were still two independent judicial hierarchies on the island, each exercising an exclusive territorial jurisdiction and each having its own officers and procedures.<sup>59</sup>

One important procedural change which dates from this period was the introduction of trial by jury in 1810, at least for the Maritime Provinces, at the instance of Chief Justice Sir Alexander Johnstone.<sup>60</sup>

The investigations and reports of the Colebrook-Cameron Commission of 1832-1833 mark an important historical watershed in Ceylonese legal development. The judicial power of the Civil Service was markedly reduced, as a Supreme Court, staffed by British barristers, was established with island-wide supervisory powers and appellate jurisdiction. This Supreme Court retained exclusive jurisdiction over serious criminal cases; District Courts were set up with limited criminal powers, but with unlimited civil jurisdiction. "European" civil cases, however, were tried by the Supreme Court.<sup>61</sup> "Sitting Magistrates" acted as criminal courts for minor violations. Civil service officers continued to staff all courts below the Supreme Court until the late 1930s, when a separate Judicial Service was established, but all lower court decisions were subject to full review by a body of judges steeped in the wisdom of the English Common Law.<sup>62</sup>

The uniform system of justice for the whole island, with a uniform procedure, as proposed by Cameron, was approved by the British Government along with most of his other recommendations. There was a retention of the powers of the village councils, of Gansabhavas, to settle minor disputes when called upon by the local chief. Despite this preservation of the Gansabhava, and the use of largely oral proceedings in the local language, the reforms were criticized for showing "a superficial knowledge of Ceylonese character" and for underestimating "the depth of caste prejudices."<sup>63</sup> Perhaps these weaknesses may be seen in the following passage from Colebrook's report:

On introducing a more comprehensive system, a gradual approximation of the principles of English law would



not be incompatible with the maintenance of such parts of the Dutch and native laws as may be just in themselves and congenial to the habits of the people.<sup>64</sup>

Undoubtedly the Colebrook-Cameron reforms would have been even more effective with a fuller appreciation of these local factors; nevertheless, they amounted to a substantial step forward.

Having thus established a more satisfactory system of judicial administration and court procedure, the British were content to leave the vast bulk of the law unchanged, at least for the time being. Only when the necessity of expansion in the coffee-plantation economy demanded more land, in the period from 1830 to 1880, was the established Kandyan system of land-holding subverted. Using much the same method as their Dutch predecessors, the British were able to force large-scale sales of this Kandyan land, generally to the benefit of the "capitalist" class.<sup>65</sup> Also in the late 1800s, new criminal and civil procedure codes were introduced, based on Indian models. A penal code and a code of evidence, likewise based on those of India, were also enacted.<sup>66</sup>

The British did make substantial statutory changes in one area of the law--commercial law. Finding that the customary law provided no answers for modern business problems, and that the Roman-Dutch Law was a little too uncertain for their liking, the British proceeded to enact large parts of their own law on commercial practices. Ordinance No. 5 of 1852 enacted the English law on maritime matters and commercial paper. Ordinance No. 22 of 1866 enacted the English law on business associations, banks, common carriers, and insurance. Ordinance No. 11 of 1896 was a Sales of Goods Act based on the English model.<sup>67</sup> With the enactment of these statutes, Ceylonese commercial law became very closely identified with the English law on the subject. Nor was much of this identity lost in the process of interpretation

and application by the courts. Since the judges were British-trained and the courts were using an English-type civil procedure, the results would closely approximate English rules on commercial law topics.

The fact that British judges were applying the legal rules to specific cases did, however, have a marked effect on the non-English portions of Ceylonese law. One does not throw off the habits of thought which are the result of a lifetime of training and experience--judges no more than other persons. The transplanted Britishers who were administering the law in Ceylon could not really be expected to leave behind their basic Common Law approach to legal problems. As a result, the doctrine of precedent and other Common Law ideas found their way into interpretations of Roman-Dutch and native law.<sup>68</sup> It is not altogether clear whether these judges were aware of the inconsistency involved in using the doctrine of precedent to solve Roman-Dutch legal questions. If they were aware of it, it appears not to have troubled them too greatly. The resulting changes may have been gradual and scarcely noticeable from day to day, but changes there were. By the end of the British period, significant adaptations had been made.<sup>69</sup>

New legal rules were also introduced by statute, to cover those situations where the British were dissatisfied with the performance of the existing system. These statutes might be in the form of a codification such as the Muslim Code of 1806, dealing with only one of the separate customary systems, or they might be phrased in more general terms, as was the Act on Married Women's Property, Ordinance No. 18 of 1923.

Thus by the selective use of statutory enactments, and through the almost imperceptible evolution in the process of litigation, the British remoulded and reshaped the law of Ceylon, purging it of its obsolete elements and adapting it to meet new problems.

## LAW IN INDEPENDENT SRI LANKA

Given this formidable array of different and often conflicting sources, can any general characterizations of Ceylonese law be made? Perhaps more basically, is there anything which can be accurately described as "Ceylonese" law? Given the present political situation in Sri Lanka, such basic questions as these are more than mere academic exercises; they have great potential significance.

To a considerable degree, the law as applied in Sri Lanka suffers from a lack of coherence and consistency. The English Common Law was once characterized by Tennyson as a "wilderness of single instances"; unfortunately, the same phrase could be used with a good deal of justification to describe the law of Sri Lanka. The customary systems have been subjected to codification and restatement, to be sure, but each of them forms a small oasis of its own in the great deserts of Roman-Dutch Law and English law. The English law has been introduced piecemeal by statute, or gradually--case by case. Moreover, the English judicial method does emphasize "single instances." Nor does the Roman-Dutch Law itself, forming the backdrop for this changing legal scenery, emphasize codification and systematization to the same extent as the Civil Law systems of Western Europe. To achieve its internal consistency the Roman-Dutch Law has relied on the systematized commentaries of the Dutch writers, which are regarded as authoritative sources of law. These commentators do not always reach unanimous conclusions; in such case a choice must be made by the tribunal between conflicting views. Such conflicts may thus be reflected in the various judicial decisions on a particular topic.

The fact that the Ceylonese legal system has retained any unity at all in the face of such imposing divisive tendencies provides good evidence of its

basic strength and of its ability to adapt to changing conditions. A blending process has been going on for many years now, so that it is no longer exactly correct to speak of the English Law and the Roman-Dutch Law as separate systems. If the blending is not yet complete, time should provide the cure for that. Mukkawa Law is gone, a victim of statute. The other customary systems have already been subjected to a good deal of statutory modification; perhaps the day is not far distant when they too shall be relegated to legal limbo. If a modified federalism is negotiated as the solution to the island's ethnic conflicts, certain regional differences could be tolerated within an otherwise unified legal system. For the present, the areas of family law, inheritance law, and certain aspects of property law are still covered by widely-differing sets of legal rules. In other legal areas one can quite properly speak of a uniform "Ceylonese" (or "Sri Lankan") rule, and the movement is in the direction of further unification and elimination of conflict.

Based on their published statements, at least some members of Sri Lanka's legal profession are aware of the challenge presented to them by their system. Reforms and improvements do not occur spontaneously; the Bar has a job to do. The first task would seem to be a restatement, along the lines of those done in the United States. Having thus discovered what the current rules are, statutory changes could be made as felt necessary, or an entire comprehensive code could be enacted, as in France or Germany.

It is to be hoped that the extremist elements are not successful in any attempt to "purify" Sri Lankan Law by eliminating the "foreign" elements. Proposals of this sort (but in reverse) were made by an uncomprehending British writer in 1886, to-wit: "All remains of the Roman-Dutch law should be cut down and grubbed up, root and branch."<sup>70</sup> Neither Roman-Dutch Law nor

English Law is "foreign" to Sri Lanka today; both are integral parts of the present legal system and of past Ceylonese history. It would seem to be the height of folly to discard a system which provides a key to the storehouse of the world's legal wisdom in favor of some hastily-drafted, emotionally-inspired, untried and unproven "national" law. Far better to build on the foundations already laid through past centuries.

It may be overly optimistic to believe that the island's long-standing ethnic conflicts can be solved. Surely, however, its rich legal heritage, combining the world's two great legal systems--the Roman Law and the Common Law, must contain a basis for doing so. It is clearly in the interests of all parties to negotiate a settlement which will restore peace. A massive stockpile of legal raw material is available; only the will to put it to use is lacking.

NOTES:

1. Sri Lanka Rebels Kill 107 Civilians in Jungle Ambush, NY TIMES, (April 18, 1987), 1 & 3; Crossette, Sri Lankan Rebels Are Said to Kill 15, NY TIMES, (April 21, 1987), 4; Crossette, 100 Sri Lankans Die as Bomb Rips Into Bus Station, NY TIMES, (April 22, 1987), 1 & 8.
2. Making Another Belfast in Sri Lanka, NY TIMES, (April 21, 1987), 26: "Killing children and civilians is a deed meant to enrage, not to persuade."
3. Sri Lanka Rebels Kill 107 Civilians in Jungle Ambush, supra note 1. Later reports raised the number killed to 127.
4. Crossette, Sri Lankan Rebels Are Said to Kill 15, supra note 1.
5. Ibid.
6. Labelle, Sri Lanka Civil War Toll Soars, ANN ARBOR NEWS, (April 22, 1987), A1 & A6.
7. Id.
8. Crossette, 100 Sri Lankans Die as Bomb Rips Into Bus Station, supra note 1.
9. Crossette, Sri Lanka's Air Force Raids Bases Held by Rebel Groups, NY TIMES, (April 23, 1987), 1 & 7.

10. Labelle, *supra* note 6.
11. Crossette, Sri Lanka Acting to Contain Reprisals, NY TIMES, (April 26, 1987), s.4, p.2; Weisman, Murderous Feuds Threaten Unity of South Asian States, NY TIMES, (April 26, 1987), s.4, p. 1; Hazarika, India Urges Leaders of Tamils to Negotiate With Sri Lanka, NY TIMES, (April 26, 1987), s.1, p.10; Crossette, Behind Sri Lankan Communiques, a Frustration Over India's Role, NY TIMES, (April 26, 1987), s.1, p.10.
12. Crossette, 100 Sri Lankans Die, *supra* note 1.
13. Nyrop et al., SRI LANKA: A COUNTRY STUDY, (Washington, D.C.: Government Printing Office, 1985), 31-32.
14. *Ibid.*, 34-35.
15. Crossette, 100 Sri Lankans Die, *supra* note 1; Nyrop et al., *supra* note 13, pp. 35-37.
16. *Ibid.*
17. Nyrop, et al., *supra* note 13, pp. 35-38.
18. *Ibid.*
19. *Ibid.*, p. 36.
20. *Ibid.*
21. *Ibid.*, pp. 38-39.
22. *Ibid.*, p. 38
23. *Ibid.*
24. *Ibid.*, p. 39.
25. *Ibid.*, p. 40.
26. *Ibid.*, pp. 40-41.
27. Arunachalam, Kandyan Provinces, 22 J/CEYLON BRANCH/ROYAL AS.SOC. 103 (1910).
28. deSilva, CEYLON UNDER THE BRITISH OCCUPATION, 1795-1833, (Colombo: Colombo Apothecaries Co., Ltd., 1953), Vol.I, Ch.10, *passim*.
29. Nadarajah, The Legal Systems of Ceylon, 10 U/CEYLON R 31, 33 (1952).
30. Tambiah, The Alexander Johnstone Papers, 3 CEYLON HIST J 18 (July 1953); Jennings, Notes on Kandyan Law Collected by Sir Archibald C. Lawrie, LL.D., 10 U/CEYLON R 185 (1952); Derrett, The Origins of the Laws of the Kandyans, 14 U/CEYLON R 105 (1956); Hayley, A TREATISE ON THE LAWS AND

CUSTOMS OF THE SINHALESE INCLUDING THE PORTIONS STILL SURVIVING UNDER THE NAME KANDYAN LAW, (Colombo: W.H. Cave & Co., 1923).

31. In a case involving a boundary dispute, a snake writhed its way across the disputed field; taking this as an omen, the tribunal immediately declared that the snake's path was the boundary line. Reported in Jennings, supra note 30.
32. Jayewardene, THE ROMAN-DUTCH LAW OF DIVORCE, WITH SPECIAL REFERENCE TO CEYLON, (Colombo: no source, 1952).
33. Derrett, supra note 30.
34. Ievers, The Custom of Polyandry in Ceylon, 16 J/CEYLON BRANCH/ROYAL AS. SOC. 3 (1899).
35. Nadarajah, supra note 29, at 34.
36. Jennings and Tambiah, THE DOMINION OF CEYLON: THE DEVELOPMENT OF ITS LAWS AND CONSTITUTION, (London: Stevens & Sons, 1952), 261-275.
37. Ibid., at 267.
38. Tambiah, THE LAWS AND CUSTOMS OF THE TAMILS OF JAFFNA, (Colombo: The Times of Ceylon, 1953), at 25.
39. Jennings and Tambiah, supra note 36, at 263-267.
40. Nadarajah, supra note 29, at 34-35; Jennings and Tambiah, supra note 36, at 255-257.
41. Jennings and Tambiah, supra note 36, at 252-253.
42. Ibid., at 252-260.
43. Ibid., at 276-280.
44. Ibid., at 193-194.
45. Nadarajah, supra note 29, at 36; Gogerly, The Laws of the Buddhist Priesthood, 2 & 3 J/CEYLON BRANCH/ROYAL AS. SOC. (1853, 1854, 1858-1859).
46. Father Queyroz, as quoted in Ludowyk, THE STORY OF CEYLON, (London: Faber & Faber, 1962), at 109.
47. Bailey, CEYLON, (New York: Hutchinson's University Library, 1952), at 51.
48. Pieris, CEYLON: THE PORTUGUESE ERA, (Colombo: The Colombo Apothecaries Co., Ltd., 1914), vol. II, at 213-214.
49. As quoted in Pieris, supra note 48, at 80.
50. Nyrop et al., supra note 13, at 40.

51. Ludowyk, supra note 46, at 116.
52. See text at note 19.
53. Ludowyk, supra note 46, at 128.
54. Ibid., at 129.
55. Ibid., at 129.
56. Ibid., at 133-134.
57. Bailey, supra note 47, at 72.
58. Wriggins, CEYLON: DILEMMAS OF A NEW NATION, (Princeton: Princeton University Press, 1960), at 15 and 44; cf. Weerawardana, GOVERNMENT AND POLITICS IN CEYLON, 1931-1946, (Colombo: Colombo Economic Research Assn., 1951).
59. Woolf, Diaries in Ceylon, 1908-1911, 9 CEYLON HIST.J. (July 1959-April 1960); deSilva, supra note 28, passim.
60. Ludowyk, supra note 46, at 168.
61. Nyrop, et al., supra note 13, at 46.
62. Woolf, supra note 59, at xi. See also, Collins, PUBLIC ADMINISTRATION IN CEYLON, (London: Stevens & Sons, Ltd., 1951), at 62. For a complete picture of the reforms, see Mendis, ed., THE COLEBROOK-CAMERON PAPERS, (London: Oxford University Press, 1956), two volumes.
63. Mendis, supra note 62, volume I, at 28 et seq.
64. Ibid., at 58-59.
65. Ludowyk, supra note 46, at 192-193; Driesen, Land Sales Policy and Some Aspects of the Problem of Tenure, 1836-1886, Part II, 15 U/CEYLON R 36 (1957).
66. Nadarajah, supra note 29.
67. Ibid.
68. Gratiaen, The Tangle of Precedent, 10 U/CEYLON R 265 (1952).
69. Ahlip, The Aquilian Action, 12 U/CEYLON R 217 (1954).
70. Clarence, Administration of Justice in Ceylon, 2 LAW Q.R. 38 (1886).